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The academic study of law in Argentina

Resumen

La Escuela de Derecho Di Tella constituye el primer intento sistemático en la Argentina de establecer una escuela de investigación del derecho según el modelo americano. La Escuela es pionera integrando la economía y la filosofía a los estudios de derecho. Tiene un curriculum innovador y flexible, tanto en los estudios de pregrado, como en los de postgrado. Comenzó sus actividades en 1996 y actualmente, diez años más tarde, cuenta con 261 estudiantes de pregrado y postgrado.

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Abstract

The Di Tella School of Law is the first systematic attempt in Argentina to establish a research school of law on the American model. The School leads the way in integrating economics and philosophy into legal education. It has innovative and flexible curricula, both in the undergraduate and the graduate programs. It started operations in 1996, and it has today, ten years later, 261 undergraduate and graduate students. Faculty members are publishing their papers in prestigious Anglo-American journals. Some of them are also publishing in Spanish. Over time more and more courses are being taught by full time instructors. At present, 63% of courses in the foundation-level program, and 47% of courses across the whole undergraduate law curriculum, are taught by full time faculty. Adjunct instructors (practitioners and members of judiciary) teach the remaining courses. This is the greatest ratio of full time law teaching in the country. Almost half of our graduates are employed in top law firms in Buenos Aires. Many of them also pursue postgraduate education, generally in the US or Europe. Still only a few of them work in the courts as clerks.

Since its inception in 1996 the School of Law of Universidad Torcuato Di Tella has been committed to fostering the academic study of law in Argentina on the model of top research-based American schools of law. Thus, we have stressed the importance of substituting a theoretically-minded, interdisciplinary conception of legal studies for the traditional doctrinal approach. The interdisciplinary conception mainly relies on law and philosophy and law and economics, though it also comprehends legal history, economic history, and law and political science. As is well known, this is the mainstream conception of legal education in the US today. The doctrinal investigations which represented the vast bulk of legal research in the '50 are today complemented by interdisciplinary research, which have revolutionized legal scholarship. The inquiry into the interrelations of law with economics, moral and political philosophy, history, and literature has led the recent generation of American legal scholars to new frontiers of legal research. With the possible exceptions of criminal law theory in Germany and general jurisprudence in Britain, legal scholarship has not reached anywhere else such high degree of intellectual sophistication and creativity. Most branches of this kind of interdisciplinary scholarship are unknown outside the English-speaking world, though the economic analysis of law is gaining importance in Europe and Latin America.

In introducing the interdisciplinary approach, we have transplanted into Argentina a new paradigm of academic law that competes with the traditional legal science paradigm prevailing in civil law jurisdictions since the reception of Roman law in Europe. Contrary to widespread "autonomy of the discipline" allegations, which underlie the specialness of law and, moreover, of particular branches of legal studies (e.g., contract law, family law, labor law, etc.), we have deflated disciplinary barriers that often masquerade professional and economic interests. Along this process we have sought to strike a delicate balance between the academic study of law and professional training. We have understood that doctrinal teaching is unavoidable because judges tend to reason following the abstract categories and concepts of civilian legal science. Practical teaching (e.g., procedural training) is also important in a country like Argentina, where apprenticeship is not a prior requirement to the practice of the legal profession.

In this paper I set out to describe the philosophy of the Di Tella School of Law, an innovative endeavor that is reshaping the idea of legal education in Argentina. For this purpose I need to place the Di Tella model against the background of the contemporary Anglo-American debate on legal education. As will become clear, Di Tella is on the side of academic law in this debate. This I will do in sections I and II. Then in section III I will provide a critical assessment of the state of legal education in Argentina. In subsequent sections I will explain the main features of the Di Tella law curriculum and academic organization.

1. The Debate in Anglo-American Legal Education

Legal education is a controversial topic everywhere. There is probably no other intellectual field where campus studies vary so much in organization, orientation, and topics. In the United States, since the introduction of academic legal education at Harvard, the law school is a unique institutional setting. Most law schools in the United States resemble one another in features such as the case method, simulation courses, law reviews, clinical programs, moot court competitions, and a sustained effort in fund-raising. As other departments of campus education, American law schools rely primarily on full-time professors and only to a very limited extent in adjunct professors (i.e. practitioners who teach in specific courses).

However, there is no unanimity in the United States as to the goals legal education should achieve. Though American law schools have scored in the last years great scholarly breakthroughs, like law and economics and the systematic application of professional normative philosophy to the study of many legal institutions (from criminal law to torts law), some people think that the interdisciplinary, theoretically-minded orientation of top law schools has gone too far.

Thus, Judge Harry Edwards criticizes the "graduate school" model advocated by some professors of law and economics.[1] This model prioritizes a theoretically-minded approach at the expense traditional doctrinal analysis as found in common-law treatises and case-books. According to Edwards, "law &" faculty are uninterested in and disdainful of legal practice. Instead of teaching students how to analyze and construe authoritative legal texts and counsel their clients in accordance with the ethical standards of the profession, these "unpractical scholars" focus on empirical explanation and prediction or on idealized moral evaluation, unconstrained by legal rules. Edwards defends a return to the traditional "practical" law school, mainly addressed to solving the practical problems of the profession or the judiciary.[2]

Professor Anthony Kronman is also critical of interdisciplinary pedagogy, though his primary target is law and economics, rather than law and philosophy. Kronman tries to rescue the ideal of the lawyer-statesman which he claims prevailed in the United States during the eighteenth century and the major part of the nineteenth century. Kronman asserts that the lawyer-statesman is a devoted citizen, as opposed to a purely self-interested practitioner, not a technician but a type of human being characterized by the excellent mastery of practical wisdom.[3]

Kronman thinks that the ideal of academic law, which he traces back to Hobbes's notion of a scientific political science, conceals the practical virtues needed to practice the legal profession. According to Kronman, legal realism and its heir, the economic analysis of law, emphasize the scientific nature of finding the right answer to any legal problem in maintaining that it is just a matter of efficiency-based calculation, without regard to the essentially practical

1 / Judge Edwards targets George L. Priest, Social Science Theory and Legal Education: The Law School as University, 33 J. Legal Educ. 437 (1983). A recent defense of a similar model of legal scholarship can be found in: Thomas S. Ulen, A Nobel Prize in Legal Science: Theory, Empirical Work, and the Scientific Method in the Study of Law, 4 U Ill L Rev 875 (2002). I conjecture Judge Edwards would be eager to extend his criticism to Ulen's approach.
2 / Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34.
3 / Anthony T. Kronman, *The Lost Lawyer*, Cambridge (Mass.), Harvard University Press, 1995, 15 ff.

and temperamental traits of character involved in being a good lawyer. Kronman is concerned about the proliferation of such theories in modern American legal education.

The idea that moral imagination must be a principal concern in legal education is also stressed by Sherman Clark.[4] Starting from the widely acknowledged claim that the making of and responding to arguments is a central feature of legal education, Clark asserts that "whenever one seeks to persuade, or comprehend, or reach out to another, the first and vital step is sympathetic engagement". In becoming a personal especially trained in attaining sympathetic engagement, the law graduate can enter into different perspectives and see things like others view them.

In contrast to usual criticisms in the United States about the deprofessionalization of legal education, in England authors complain about its excessive professionalization. Peter Birks, for instance, holds that a main short-cut is that English law schools tend to skimp the subjects which fall within the vocational phase, to the impoverishment of legal education and of the law library in that sector. "One hope - he says - is that where research-based law schools have begun to offer the vocational course, their commitment to research will carry over to that sector. But there are also strong disincentives which work to prevent more research-based law schools from entering the vocational field."[5]

Wilson and Morris share the same view about the anti-intellectual climate of legal education in England. The general picture one draws from British authors is that academic law is mainly absent in England. According to Wilson and Morris, instead of reinforcing the position of academic subjects, like general jurisprudence, legal history, and comparative law, many English law schools have increasingly emphasized the importance of professional skills training.

2. Professional Skills and the Academic Study of Law

Many lawyers and law professors stress the contrast between the academic phase and the vocational phase, or the theoretical and the practical dimensions of legal education. However, it is doubtful that this contrast is stark. It is true that, as Francis Bennion holds, the "ability to manage the relevant law is central to any lawyer's or law student's functioning".[6] This is what Americans call lawyering. Gold, Mackie and Twining pointed out in 1989 that "one cannot draft, persuade, interrogate, advise or manage in law without first having intellectually manipulated the relevant materials."[7]

Caroline Maughan claims that it is the ability to practice reflectively which distinguishes the expert from the merely competent professional. In contrast to the classical view of professional skills, which takes them to be rule-based knowledge, Maughan thinks that reflective practice skills involve the heuristics needed to deal with the unpredictability of real world problems.[8] To a certain extent, legal education can transfer that experience through simulation techniques, but it is nonetheless clear that only real professional practice can provide the expertise needed for reflection in action.

Intelligent manipulation of the relevant legal materials far exceeds the mere possession of good information about legal texts. As Gold states, "it is necessary to know how to push back that which lies on the surface in order to uncover both legal and factual material which lies below... Legal rules guide, direct and ultimately determine the results in particular cases; nevertheless, they always exist for some reason, however vague and unclear. A lawyer is therefore called upon to determine the intent, purpose and goal of legal rules... Often times rules form part of an over-arching theory. Knowledge required of the lawyer is therefore the well orchestrated co-ordination of information and intellectual skill".[9]

The Task Force on *Law Schools and the Profession: Narrowing the Gap* was formed in 1989 by the American Bar Association for the purpose of studying and improving the processes by which new members of the profession are prepared for the practice of law. In its 1992 report[10], the Task Force expounds a vision of

4 / Sherman J. Clark, The Ends *of Legal Education*, forthcoming. I am grateful to Horacio M. Lynch for having sent me this manuscript.
5 / Peter Birks, 'Short-Cuts', en Peter Birks (ed.), Reviewing Legal Education, Oxford University Press, 1994, 21.
6 / Francis Bennion, 'Teaching Law Management', en *Reviewing Legal Education*, cit.
7 / N. Gold, K. Mackie and W. Twining, *Learning Lawyers' Skills*, Butterworths, 1989.
8 / Caroline Maughan, 'Problem-Solving Through Reflective Practice: The Oxigen of Expertise or Just Swamp Gas?', *Web Journal of Current Legal Issues* 2 (1995).
9 / N. Gold, 'The Professional Legal Training Program: Towards Training for Competence', *The Advocate* (Canada) 41 (1983).
10 / Robert MacCrate (ed.), *Legal Profession and Professional Development-An Educational Continuum, The Profession for Which Lawyers Must Prepare*, West Publishing.

the skills and values new lawyers should acquire.[11] Although the report suggests a professional approach to legal education, it cannot be taken as downgrading the importance of academic education in law schools. As the report is concerned with narrowing the gap between legal teaching and legal practice, it mentions those skills which students need acquire in passing thorough the law school. This is not to say that law schools should only seek to develop such skills. The Law School is a professional school, but at the same time it must "encourage students to see the law, and its operation ... ambiguous, dynamic, and alive; a repository for ideas, values and culture; a method of practical reasoning; Janus-faced, a force for liberation or authoritarian control; in short a worthy object of academic study in its own right".[12]

3. The Situation in Argentina

In Argentina most law professors are intensively engaged in legal practice, and can devote little time to research and writing. Many of them also lecture in various universities. Although lawyers usually vociferate in favor of the academic study of law, it can be doubted whether that language conveys a genuine conviction, or rather a slogan occasionally repeated.

Several factors can help to explain that situation, like the general features of our university system, the lack of strong research traditions in the social sciences, a pragmatic and politicized approach to legal institutions, and probably a disdain for theoretically-minded research and teaching. In the latter respect, the Argentine situation might be similar to that existing in England. In fact, the mentality prevailing in a certain area of social life cannot be asserted by what people say, but rather by what people do. In the United States lawyers contribute with millions of dollars to the sustenance of law schools, from the building of new premises to the establishment of libraries. In Argentina most faculties of law do not have on-going policies of fund-raising, but such policies would hardly yield interesting fruits, should they be seriously undertaken.

Lynch et al have emphasized that professional training is neglected in Argentine law schools. They contend that the law school should be run as a professional school and hence oriented towards training professionals, much in the same way as the Faculty of Medicine is devoted to training physicians. These authors hold that our legal education is "excessively theoretical and dogmatic; the professor restricts himself to conveying to students knowledge he deems to be valid, neglecting the importance of spurring them on to thinking, discussion and research".[13] These authors contrast theorization, dogmatism, and erudition with the attitude of American law professors, who concern themselves with helping students to develop professional skills, like legal analysis, the skill to distinguish relevant from irrelevant factors, the skill to construct the most persuasive arguments, and so on.

The Fores study emphasizes that Argentine legal education lacks a strong professional training side. However, I would like to point out that this is not the result of a time trade-off. The lack of practical training is not the price paid for having the chance to prepare theoretically-minded lawyers. Indeed, generally speaking, law students receive neither enough practical training nor real theoretical education. In fact, mainstream Argentine legal science is still solely devoted to doctrinal studies, which describe and systematize legal materials, and give judges recommendations about how to construe those materials when gaps or other indeterminacies arise.[14] Rather than aiming to constructing theories possessing high explanatory power, meshed with interdisciplinary theorizing, like efficiency-minded legal scholarship, or deep-seated in normative analytical philosophy - both moral and political -, Argentine legal doctrine has a markedly expository and practical nature. The so-called theoretical education is then a systematic espousal of enacted law and of normative principles possessing an intermediate degree of generality, which can justify the rules enacted in a certain area of law and advocate solutions for hard cases.[15]

11 / The report enumerates the following skills and values. *I. Fundamental Lawyering Skills:* 1. Problem Solving; 2. Legal Analysis and Reasoning; 3. Legal Research; 4. Factual Investigation; 5. Communication; 6. Counseling; 7. Negotiation; 8. Litigation and Alternative Dispute-Resolution Procedures; 9. Organization and Management of Legal Work, and 10. Recognizing and Resolving Ethical Dilemmas. *II. Fundamental Values of the Profession:* 1. Provision of Competent Representation; 2. Striving to Promote Justice, Fairness, and Morality; 3. Striving to Improve the Profession, and 4. Professional Self-Development.

12 / William Wilson and Gillian Morris, 'The Future of the Academic Law Degree', in *Reviewing Legal Education*, cit., p. 101.

13 / Horacio M. Lynch et al, *La Educación Legal y la Formación de Abogados en la Argentina*, Fores, La Ley, 1988.

14 / Horacio Spector, "La dogmática juridica: Algunos problemas epistemológicos", Revista de Ciencias Sociales 29 (1986); "The Future of Legal Science in Civil Law Jurisdictions", *Louisiana Law Review*, Volume 65, Fall 2004, Number 1; "Fairness Versus Welfare from a Comparative Law Perspective", *Chicago-Kent Law Review*, Volume 79, Number 2, 2004.

15 / "Local" normative doctrines are also present in common law. Cass Sunstein claims that these doctrines facilitate agreements on normative matters among persons who maintain profound discrepancies at the level of general moral and political theories; see: Cass R. Sunstein, *Legal Reasoning and Political Conflict*, Oxford University Press, 1996.

I claim that *interdisciplinary research and education* of the kind performed in research-based American law schools should enrich Latin American and, in particular, Argentine legal education. Our legal scholarship is dominated by the European ideal of autonomous and self-contained legal thinking. As a natural result, central branches of contemporary social thought, such as law and economics, law and political science, and law and philosophy are by and large neglected or merit insufficient attention. This feature has adverse effects on law graduates' capability to *understand* the value and public policy implications of different legislative measures and adjudication policies. In Argentina, where lawyers typically play important political roles as legislators, public officials or advisors, a predominantly doctrinal legal education also impoverishes the quality of the democratic debate and creates risks for the preservation of democratic and liberal values in public policy decision- making.[16]

Interdisciplinary, theoretically-minded research is common currency today in the best American law schools. Unlike Judge Edwards, I believe that this kind of research is critical important for legal education, particularly in a region like Latin America, where foundational issues are often raised by political and economic crises, constitutional and social reforms, and deep conflicts arising out of divergent social ideologies. While handling legal materials in a formalistic fashion may be all lawyers and judges need in stable legal and social scenarios, the reshaping of legal positions as a result of crises, for instance, requires an acquaintance with the value and economic foundations of law. The Argentine megacrisis of 2001 provides a good example. Unlike the social constitutions of Latin American countries that have implemented agrarian reforms, Argentine law establishes an individualistic system of private property. Thus, Article 17 of the Argentine Constitution says that property is inviolable, and the Civil Code strengthens this principle by articulating an absolute model of ownership. In fact, Article 544 of the Napoleon Code defines ownership as the right of enjoying an object in the most absolute manner, and Article 2506 provides that ownership is the right *in rem* by which a thing is subjected to the will and the acts of a person. While handling norms of this kind may be sufficient for practicing property law in Switzerland, this was clearly insufficient in Argentina. The massive bank run and collapse of the financial system led to a bank deposit freeze in 2001 and to pesofication in 2002. Emergency takings cannot be easily accommodated in an individualistic model of private ownership. Poor economic and philosophical background in our judges and lawyers made it more difficult to define a legal approach capable of meeting the consensus of the judiciary and the profession. Still today (in September 2006) the Supreme Court and lower courts disagree about the constitutional treatment to be given to the pesofication of bank deposits.

In American legal theory the relationship between philosophy and legal education is often emphasized.[17] Richard Posner disbelieves Martha Nussbaum's suggestion that Ph.D.s in philosophy can be added to law schools' faculties. But the reason of his skepticism is that "the techniques of analytic philosophy and of legal reasoning are similar".[18] Among these techniques Posner mentions the analysis and interpretation of canonical texts, and the use of logical tools to address difficult problems. Because of the similarity of techniques, Posner thinks that graduates endowed with philosophical skills will opt for entering law schools attracted by law professors' and practicioners' higher salaries. In fact, Posner's prediction seems disconfirmed by the facts. An increasing number of philosophers who also have law degrees are today being recruited by the most prestigious law schools. What is important, however, is that Posner's proposition that philosophical and legal reasoning are similar supports my contention that philosophical training is helpful for developing legal skills.

Ronald Dworkin's position is closer to Nussbaum's. Dworkin holds that many important legal issues depend on the clear understanding of difficult concepts that philosophers have extensively analyzed, such as the concepts of responsibility, intention, and equality. On this account, Dworkin maintains that "[t]here should be more introductory and advanced courses in substantive moral and political philosophy than they used to be." He adds that "…law schools should aim to bring philosophy into the more basic legal courses as well." Dworkin goes farther in suggesting

16 / Horacio Spector, *Elementos de análisis económico del derecho*, Buenos Aires, Rubinzal-Culzoni, 2004.

17 / Martha C. Nussbaum, "The Use and Abuse of Philosophy in Legal Education", 45 *Stanford Law Review* 1627 (1993); Richard A. Posner, *Overcoming Law*, Cambridge (Mass.), Harvard University Press, 1995, Ch. 22, and Ronald Dworkin, "Must Our Judges Be Philosophers? *Can* They Be Philosophers?", New York Council for the Humanities Scholar of the Year Lecture (2000), 1 Nov. 2000 <http://www.culturefront.org/culturefront/Dworkin.html>.

18 / *Overcoming Law*, p. 465.

that law schools should actively search professional philosophers: "I do think […] that bringing philosophers into a law school, and encouraging them to think and teach alongside lawyers, is particularly fruitful for both disciplines".

The Latin American experience confirms the connection between training in philosophy and economics and the mastery of law. Indeed, it is easy to mention various examples of Latin American statesmen and jurists who have benefited from a legal education oriented toward philosophy and economics. Andrés Bello and Juan Bautista Alberdi, probably the two most eminent Latin American jurists of the nineteenth century, are excellent examples. Bello's case is telling about the relevance of analytical philosophy. Bello lacked ordinary legal education and never practiced the legal profession. In fact, Bello's basic background was not law but philosophy. He obtained a bachelor's degree in philosophy from the University of Caracas and then attended some courses in law and medicine. With this background Bello made great contributions to grammar and medieval literature. Bello was familiarized with modern analytical philosophy (Locke, Condillac, and Bentham among others). He also wrote the best Latin American philosophical treatise in the nineteenth century: *Filosofía del entendimiento*. Though he was not a practicing lawyer, he was a bright jurist and legal educator. His books on Roman Law and International Law paved the way for legal education in the region, and his famous *Código Civil de la República de Chile* is a corner-stone of Latin American law.[19]

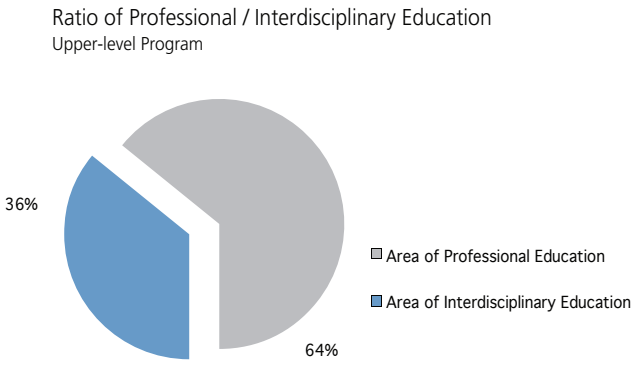
Alberdi illustrates the connection between economics and law. Alberdi was quite knowledgeable in classic economics. He claimed that the reason why the rule that tradition is not necessary for transference of ownership meets the objection of French jurists is that "political economy is not familiar to scholars who cultivate law".[20] Alberdi's *Sistema económico y rentístico de la Confederación Argentina* is a real essay in law and economics focused on constitutional issues.[21] Moreover, Alberdi also holds that "knowing laws is not to know law". For Alberdi, the knowledge of law comprehends the knowledge of the spirit and missions of laws, which issues belong to philosophy, rather than to pure legal science.[22]

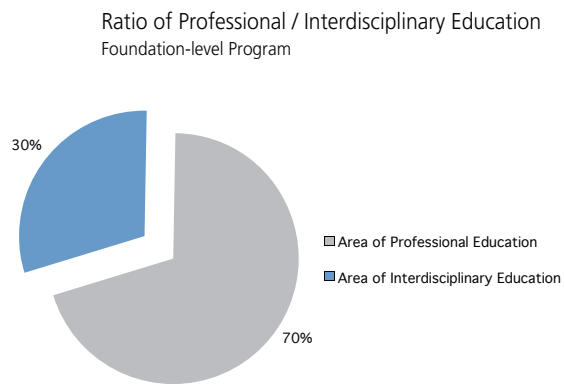
Some contemporary examples support the causal relationship between expertise in analytical philosophy and the mastery of law. Undoubtedly, the best case law study in Argentina is Genaro Carrio's *El recurso extraordinario por sentencia arbitraria en la jurisprudencia de la Corte Suprema*.[23] Carrio was a notable legal philosopher. Among other achievements, he was one of the earliest defenders of what Anglo American legal philosophers call today "inclusive positivism".[24] It might be replied that constitutional law is intimately linked to political philosophy and that other branches of law are so distant from philosophy that they cannot benefit from philosophical analysis. To rebut this suggestion I will take my last example from International Commercial Law. Professor Sergio Le Pera studied legal philosophy at the beginning of his academic career and then turned to commercial law and arbitration. Le Pera is one of the most distinguished Argentine commercial lawyers. In *ISEC v. Bridas*, representing Bridas, Le Pera argued that an American court lacked subject matter jurisdiction to vacate an arbitration award released in Mexico according to Mexican procedural law. The U.S. court sided with Le Pera. It is interesting what Le Pera has to say about how he reasoned his case: "I find it difficult to say what led me in those days to take for granted that only the courts in Mexico had jurisdiction to annul or vacate the ward; probably it was that old readings of Kelsen, Hart, and Ross make me think of arbitral awards, judicial orders, statues, and similar material as 'norms" or 'directives' created within a national legal system that can only be annulled or destroyed within that national legal system pursuant to its procedural law."[25]

4. Interdisciplinary Teaching at Universidad Torcuato Di Tella Law School

The Law School at Universidad Torcuato Di Tella makes a serious effort to promote interdisciplinary research and education. This approach relies on the proposition that civil law, as much as common law,

19 / Iván Jaksic A., Andrés Bello: La pasión por el orden, Santiago de Chile, Editorial Universitaria, 2001; Arturo Ardao, Andrés Bello, Filósofo, Academia Nacional de la Historia, Caracas, 1986.
20 / Juan Bautista Alberdi, Obras completas, tomo VII, Buenos Aires, Imprenta de "La tribuna nacional", 1887, p. 112.
21 / Juan Baustista Alberdi, Sistema económico y rentístico de la Confederación Argentina según su Constitución de 1853, Buenos Aires, Raigal, 1954.
22 / Juan Baustista Alberdi, Fragmento Preliminar al Estudio del Derecho, Buenos Aires, Biblos, 1984, 111.
23 / Genario R. Carrió, El recurso extraordinario por sentencia arbitraria: en la jurisprudencia de la Corte Suprema, Buenos Aires, Abeledo-Perrot, 1967.
24 / Genaro R. Carrio, Principios Jurídicos y Positivismo Jurídico, Buenos Aires, Abeledo-Perrot, 1970.
25 / Sergio Le Pera, "Where to Vacate and How to Resist Enforcement of Foreign Arbitral Awards: International Standard Electric Corporation v. Bridas Sociedad Anónima Petrolera, Industrial y Comercial", The American Review of International Arbitration 2 (1991), p. 49.





has economic and philosophic foundations. I have maintained elsewhere that the ideas of fairness and efficiency serve to bring to light the rationale of many legal institutions, though civilian systems seem more closely associated with the idea of fairness.[26]

The Di Tella curriculum tries to give undergraduate students a basic liberal arts education. Thus, courses in moral and political philosophy as well as those in economics and history play an important role in the curriculum. Our syllabus also includes courses that are common in American colleges, like *Research and Writing* and *Applied Ethics*. Law students obtain from liberal arts teaching the kind of intellectual sophistication that the legal profession requires. On the contrary, other law faculties in Argentina follow the traditional professional orientation. The syllabus reform made by the Faculty of Law of the University of Buenos Aires in 1985 adopted the same approach, though it introduced great –some think too great– curriculum flexibility.[27] The professional orientation ignores the fact that law students in Argentina, unlike American law students, are undergraduates who are in dire need of basic university instruction. A tight intertwining of professional and academic courses serves both to enrich legal education and to show students the diverse ways in which law affects social values and practices. Unlike other undergraduate programs that adopt a "textbook" strategy, Di Tella law faculty follow the "Oxford model": undergraduate students are exposed to materials taken both from classical authors and the most recent scholarly contributions in each academic field.

The undergraduate law curriculum at Di Tella is organized on the basis of a five-year program divided up into two levels: the *Foundation-level Program* (3 years) and the *Upper-level Program* (2 years). While the former has obligatory courses, the latter has both obligatory and optional courses. Both programs offer professional and interdisciplinary courses. In the Foundation-level program 70% of courses are professional and 30% are courses in philosophy, history and economics (Fig. 1). In the Upper-level Program this ratio shows a slight variation (Fig. 2).

Apart from the undergraduate law program, the School established in 2000 the first LL.M. in Law and Economics in Latin America, which provides teaching in business law and law and economics to young qualified practitioners who work in the most prestigious law firms of Buenos Aires. At the same time, the School offers an International Program in Tax Law, and will soon start an LL.M. in Criminal Law. The postgraduate programs are addressed to change the way different branches of law are taught in traditional faculties of law. Thus, in the postgraduate tax program students take courses in Taxation and Public Finance that are similar to those taught in Business Schools. The LL.M. in Criminal Law will contain, for the first time, the latest contributions in law and economics and Anglo-American normative philosophy.

26 / Horacio Spector, "Fairness Versus Welfare from a Comparative Law Perspective", Chicago-Kent Law Review, Volume 79, Number 2, 2004.
27 / Horacio M. Lynch, "A diez años de las reformas en la Facultad de Derecho de la UBA", La Ley, September 12th 1995. Lynch holds that the reform yielded many shortcomings in terms of professional training.

5. The Case Method at Di Tella

As is well-known, the kernel of the case-method is to rely on appellate opinions to teach legal doctrines. This is the standard educational procedure for teaching the professional skills in American schools of law. The familiar explanation of the case method, and its associated Socratic teaching methodology, is that it familiarizes students with legal materials and the profession's standard linguistic and reasoning styles. The immersion in judicial opinions which is the hallmark of the case method provides the student with a simulacrum of practice. Confronted with Socratic questions, the student feels like a novel graduate answering a senior partner or advising a client.[28] Moreover, the method prepares students in identifying relevant factors, devising legal theories for the resolution of cases, criticizing legal argumentation, and applying legal rules. The case method might also be useful - like theater - for developing the moral imagination of students, as it is a long exercise in forced role-playing enabling students to acquire greater powers of moral sympathy.[29]

The fact that the case method is *not* inherently tied to which sources of law a legal system accepts (what H.L.A. Hart calls the rule of recognition) is rightly asserted by Horacio Lynch et al.[30] and Jonathan Miller[31]. Indeed, as Robert Stevens from the Pembroke College in Oxford points out[32], Langdell introduced the case method at Harvard much later than the American legal system inherited its common-law structure from British law. If courses on positive law are to be capable of providing good professional training, it should make students acquainted with the law in action, that is, with the rules that are effectively applied by courts. This does not involve a commitment to legal realism, but, more simply, the common-sense wisdom that time is scarce and must be optimized. In civil law systems the rules applied by judges are generally pre-determined as provisions in the civil code. So, if this reasoning were sound, civilian professors should be able to teach civil code provisions with the case method as easily as their common law colleagues use the case method to teach common law principles.

However, our experience at the Di Tella School of Law indicates that some courses in a civil law syllabus are not easily amenable to case-based teaching. The explanation of this puzzle resides in the fact that civilian teaching involves mastering "legal science". As John Henry Merryman says, "The contemporary civil law world is still under the sway of one of the most powerful and coherent schools of thought in the history of the civil law tradition. We will call it legal science."[33] As is well known, the shaping of European legal science began with the reception of Roman Law in the Early Middle Ages and culminated with the works of Savigny, Jhering and the *Begriffsjurisprudenz* in the nineteenth century. In this long process legal science evolved from glosses and commentaries on the Corpus Iuris Civilis to abstract and complex theories.[34] The great civilian jurists sought to turn a vast array of legal materials flowing from different sources into a *coherent* and *complete* legal system premised on an abstract and orderly theoretical structure. For instance, Pandectistic legal science systematized German customary rules and Roman Law. Because civilian studies achieved a high degree of abstract systematization, civilian professors feel obliged to teach their students the abstract categories and principles that inform their fields. And the truth is that they have a good point. If law graduates are to be able to argue successfully their cases before the courts, and judges reason their decisions on the basis of such categories and principles, students should learn how to master the categories and principles that the courts apply.

For the above reason, we follow a mixed approach. In Constitutional Law, Torts, and International Law lecturers use intensively the Socratic Method both in theoretical and practical classes with excellent results. They require students to read legal materials and cases *before* classes. In Criminal Law courses, case-based teaching is conducted in the German style with hypothetical cases, because Argentine appellate opinions in the criminal courts are not sufficiently rich for educational purposes. In most civil law courses –e.g., Obligations, Contracts–, case discussion is chiefly done in practical classes, while theoretical classes are devoted to legal science and economic and philosophical explanations of the relevant rules. According to official regulations in Argentina, these courses are expected to cover a vast array of

28 / Richard A. Posner, The Problems of Jurisprudence, Harvard University Press, 1990, p. 99.
29 / Anthony T. Kronman, The Lost Lawyer, cit., p. 111.
30 / La Educación Legal y la Formación de Abogados en la Argentina, cit., p. 25.
31 / Jonathan Miller, 'El método de casos y la educación legal en la Argentina', Lecciones y Ensayos 48.
32 / Robert Stevens, Law School: Legal Education in America from the 1850s to the 1980s, University of North Carolina Press, 1983.
33 / John Henry Merryman, The Civil law Tradition (1969), p. 65.
34 / Franz Wieacker, A History of Private Law in Europe (trans., 1995).

code articles. Thus, if instructors were to apply the case method in a pure and comprehensive way, they would not be able to cover syllabus requirements within a semester. In general, civil law courses that cover parts of the Civil Code that have been subjected to vast doctrinal systematization still require traditional teaching complemented by practical classes that discuss judicial opinions or hypothetical cases. For instance, the Professor of Property Law has recently published a case book containing the hypothetical cases he has used in the last years.

6. Academic Policies

Like top American schools of law, Di Tella has adopted the policy of recruiting full time research professors. In fact, it is probably the only law school in Argentina that takes this policy as a chief concern. In particular, we try to repatriate Argentine and Latin American professors and graduates. To accomplish this purpose we have established a truly demanding regime of faculty appointment and promotion. University bylaws require that evaluations of any candidate for appointment or promotion be confidentially obtained from external referees in order to provide reviewing authorities with an independent assessment of the candidate. External referees are selected by the candidate and by a Committee of External Academic Evaluation, composed at present by Professors David Schmidtz (University of Arizona), Thomas Ulen (University of Illinois at Urbana-Champaign, and Frederick Schauer (Harvard University). Candidates' scholarly contributions are evaluated with particular reference to their originality, significance and impact on the field. The School of Law, just as the other Departments and Schools of the University, has issued academic guidelines for appointments and promotions.[35] Research quality controls in Argentine legal journals are not reliable, so university authorities require our faculty members to pass the controls of the most prestigious Anglo-American journals and publishers. As long as these controls are passed, they are free to publish their contributions in Argentine and Latin American journals, or to continue publishing in the Anglo-American world.

Di Tella research policies have pros and cons. On the one hand, we guarantee high quality scholarship. This is top priority in a research university like Di Tella. On the other hand, we lose short run impact on the local legal community. Unlike economists and mathematicians, law professors from most universities do not read foreign journals and books. In practice, however, we expect to gain impact in the medium and long run. This is already taking place in two different ways. First, publishers and journals in Argentina are starting to show interest in translating our faculty's contributions into Spanish. Second, our graduates are publishing papers or writing opinions in the courts that apply our research outcomes to local problems and discussions. The great discovery is that a research law school can exert indirect influence on the local legal community through its graduates' writing, while encouraging its faculty to participate in theoretical debates that lack critical mass in many Latin American countries.

Salaries of academics and offices for full-time professors are also important. Reasonable professorial salaries are needed to attract high-quality graduates from legal practice. Though teaching and research always involve a great personal commitment, adequate conditions must be provided for enabling competent candidates to develop that commitment. Di Tella offers competitive salaries that are typically higher than those offered by public faculties of law and public research agencies.

7. Student policies

The Di Tella School of Law has at present a total of 261 students, with the following distribution: undergraduate law program, 160 students; LL.M. in Law and Economics, 75 students, and International Program in Tax Law, 26 students.

The school tries to apply a uniform grade policy in the American style. However, this has proven very difficult to implement, because adjunct professors are often accustomed to "absolute" as opposed to "relative" forms of grading. Besides, they are not familiarized with curving techniques. However, full time lecturers tend to converge on grading criteria that meet the school's guidelines. These guidelines require instructors to design exams that are able to differentiate students' efforts and performances and to avoid massively low or high grades. The following grade ratios are recommended for courses of more than 30 students: A and A- (15%), B+, B and B- (40%), C+ and C (30%), D and/or F (15%). Students that get more than 7 Ds or Fs in the whole program, or more than 3 Ds or Fs in the first and second years, must initiate the program again or leave the school. The strict application of these policies yields a high student drop-out rate, which can climb to 50% at some years. In fact, Di Tella is probably the most demanding school of law in Argentina.

35 / See evaluation guidelines in Annex 3.